Executive Order 08-02

State of Montana
Office of the Governor

Executive Order Continuing the Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council

WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) and the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) allow states as trustees for natural resources to recover monetary damages for injuries to natural resources caused by releases of hazardous substances; and

WHEREAS, in 1983 the State of Montana, pursuant to its role as trustee, filed suit in federal court against the Atlantic Richfield Company (ARCO) alleging that the company is liable for injury to the natural resources of the Upper Clark Fork River Basin; and

WHEREAS, the Governor acts as the trustee for the State's natural resources and of any damages recovered to compensate the public for injuries to those resources as permitted under CERCLA; and

WHEREAS, in 1999 the U.S. District Court for the District of Montana approved a partial settlement of Montana v. ARCO that resulted in the State obtaining, among other awards, approximately $135 million in natural resource damages for some but not all of the State's claims against ARCO; and

WHEREAS, local officials and citizens in the Upper Clark Fork River Basin desire the opportunity for input concerning how any monetary damages recovered by the State as a result of this lawsuit will be used and the opportunity to be informed regarding the State's continuing natural resource damage litigation against ARCO; and

WHEREAS, CERCLA requires that natural resource damages be used only to restore, replace, or acquire the equivalent of the injured natural resources that are the subject of the litigation (42 U.S.C. 9607 (f)(1)); and

WHEREAS, in addition to the ongoing litigation involving the Upper Clark Fork River, the Montana Department of Environmental Quality works with the U. S. Environmental Protection Agency under cooperative agreements that provide funding to the State and define state and federal agency roles for directing the remediation of various operable units within the Upper Clark Fork River Basin National Priority List sites, as authorized under CERCLA; and

WHEREAS, as a result of these interests of the public and State in natural resource damage and remediation issues, Governor Racicot created the Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council pursuant to Executive Order No. 8-98 dated April 23, 1998 and Executive Order No. 10-00 dated April 25, 2000.

NOW, THEREFORE, I, JUDY MARTZ, Governor of the State of Montana, pursuant to the authority vested in me by the laws and Constitution of the State of Montana, do hereby continue the Upper Clark

Fork River Basin Remediation and Restoration Education Advisory Council as provided in this Order.

PURPOSE

The primary purpose of the Advisory Council is to promote public understanding of the State's efforts to remediate and restore sites in the Upper Clark Fork River Basin that have been injured by hazardous substances for which ARCO is liable. To that end the Advisory Council shall establish a procedure for the sharing of information with the public and the various interested agencies, including the State's Natural Resource Damage and Superfund Programs.

Any advice provided to the Governor with respect to issues involving remediation and restoration efforts in the Upper Clark Fork River Basin, including the use of any funds that may be recovered from settlement or trial of litigation, shall be consistent with the requirement that such funds be used for restoration or replacement of the injured natural resources in accordance with a restoration plan prepared by the State of Montana as provided by law. Moreover, such advice will not be considered to the exclusion of input of other interested individuals or groups. The existence of the Advisory Council does not in any way diminish the powers of the Governor as trustee pursuant to CERCLA and CECRA. Nor is it intended to comment on the status of any pending litigation or related negotiations.

COMPOSITION

The Advisory Council will consist of the following members as identified below:

Non state-government members, who must reside in the area affected by the NRD litigation, more specifically described as the Upper Clark Fork River Basin, to be appointed by the Governor:

one businessperson;

one conservation district representative;

two local government representatives;

one engineer;

one member of the public active in conservation or recreation;

one local natural resource scientist;

one local planner or local development specialist;

- one representative of a non-profit organization, a purpose of which includes protection of environmental values in the Clark Fork River Basin; and

- one interested member of the public who does not represent one of the interests described above.

State government members, who shall be nonvoting members, include;

- Director of the Department of Environmental Quality, or the Director's designee;

Director of the Department of Fish, Wildlife and Parks, or the Director's designee;

Restoration Program Chief of the Natural Resource Damage Program or the Chief's designee;

A representative of the Confederated Salish & Kootenai Tribes, designated by the Tribal Chair; and

A representative of the United States Department of the Interior, designated by the Secretary of the

Interior.

The Governor shall appoint a chair from among the members, and the Natural Resource Damage Program will provide technical and administrative support for the Advisory Council.

The names of the members of the Advisory Council will be submitted by separate letter to the Secretary of State.

III. DURATION

This Advisory Council will exist for a period of two years from the effective date of this Order, unless continued through subsequent Executive Order.

This Order is effective immediately.

GIVEN under my hand and the GREAT
SEAL of the State of Montana,
this ___ day of July, 2002.

JUDY MARTZ, Governor

ATTEST:

BOB BROWN, Secretary of State